

1
2
3
4
5
6
7
8
9
10
11
12
13
14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DARIO DRAKES, No. C 12-1480 SI (pr)

10 Petitioner, **ORDER OF DISMISSAL**

11

12 MATTHEW CATE, Secretary of CDCR,
13 Respondent.

No. C 12-1480 SI (pr)

ORDER OF DISMISSAL

14
15 Dario Drakes, a prisoner of the State of California housed at the Tallahatchie Correctional
16 Facility in Tutwiler, Mississippi, filed a *pro se* petition for writ of habeas corpus pursuant to 28
17 U.S.C. § 2254. The petition is not his first federal habeas petition concerning his 2005
18 conviction from the Alameda County Superior Court. His earlier habeas petition in *Drakes v.*
19 *Brown*, No. C 08-2686 SI, was denied on the merits on November 18, 2009. A certificate of
20 appealability was denied in Case No. C 08-2686 SI by this court on January 21, 2010, and by
21 the United States Court of Appeals for the Ninth Circuit on February 16, 2012.¹

22 A second or successive petition may not be filed in this court unless the petitioner first
23 obtains from the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") an order
24 authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Drakes has not

²⁶ ¹That the present action challenges the same conviction that was challenged in Case No.
²⁷ C 08-2686 SI can be determined from the petitions, which both identify the same primary victim
²⁸ and both use the same trial court case number. *Compare* Docket # 1, p. 2, and Docket # 1-2, p.
3. in Case No. C 12-1480 SI with Docket # 1, pp. 9, 14 in Case No. C 08-2686 SI.

1 obtained such an order from the Ninth Circuit. This court will not entertain a new petition from
2 Drakes until he first obtains permission from the Ninth Circuit to file such a petition. This action
3 is DISMISSED without prejudice to Drakes filing a petition in this court after he obtains the
4 necessary order from the Ninth Circuit.

5 If Drakes wants to attempt to obtain the necessary order from the Ninth Circuit, he should
6 very clearly mark the first page of his document as a "MOTION FOR ORDER AUTHORIZING
7 DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE PETITION PURSUANT
8 TO 28 U.S.C. § 2244(b)(3)(A)" rather than labeling it as a habeas petition because the Ninth
9 Circuit clerk's office is apt to simply forward to this court any document labeled as a habeas
10 petition. He also should mail the motion to the Ninth Circuit (at 95 Seventh Street, San
11 Francisco, CA 94103), rather than to this court. In his motion to the Ninth Circuit, he should
12 explain how he meets the requirements of 28 U.S.C. § 2244(b).

13 The clerk shall close the file.

14 IT IS SO ORDERED.

15 DATED: April 9, 2012



SUSAN ILLSTON
United States District Judge

17

18

19

20

21

22

23

24

25

26

27

28